

## Internal Revenue Service

Department of the Treasury  
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, ID No.

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Refer Reply To:  
CC:PSI:B03  
PLR-108978-07  
Date: January 14, 2008

### LEGEND

Taxpayers =

Year =

Dear :

This letter responds to a letter dated February 16, 2007, and subsequent correspondence, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations that Taxpayers be granted an extension of time to file an election under § 469(c)(7)(A) of the Internal Revenue Code and § 1.469-9(g)(3) of the Income Tax Regulations to treat all interests in rental real estate as a single rental real estate activity commencing in Year.

### FACTS

According to the information submitted, Taxpayers are spouses who file their tax returns jointly. Taxpayers represent that, in Year, they were in a real property business as defined by § 469 and were qualified to elect to treat all interests in rental real estate as a single rental real estate activity under § 469(c)(7)(A) and (B). Taxpayers relied on a qualified tax professional who inadvertently failed to make this election for Year when he did not include the statement required under § 1.469-9(g)(3) with the Taxpayer's joint return filed for Year.

### LAW AND ANALYSIS

Under § 469(c)(2), the term “passive activity” generally includes any rental activity. Section 469(c)(7) provides a limited exception to this rule for taxpayers in a real property business. Specifically, § 469(c)(7)(A) indicates that if a taxpayer meets the requirements of § 469(c)(7)(B), the taxpayer's rental real estate activity will no longer be presumptively passive. By its terms, the exception under § 469(c)(7)(A) is to be applied as if each interest of the taxpayer in rental real estate were a separate activity. However, a taxpayer may elect to treat all interests in rental real estate as a single activity.

Section 1.469-9(g)(3) provides that a qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer's original income tax return for the taxable year. Section 1.469-9(g)(3) describes the information that must be contained in the statement.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term regulatory election means an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 sets forth the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

### CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Taxpayers are granted an extension of time of sixty (60) days from the date of this letter to make an election under § 469(c)(7)(A) to treat all their interests in rental real estate as a single rental real estate activity effective Year. The election must be in the form of the statement required by § 1.469-9(g)(3) and attached to an amended return for Year. A copy of this letter should be attached to the election.

Except as expressly set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts discussed above under any other provision of the Code. Specifically, no opinion is expressed or implied concerning whether Taxpayers satisfy the requirements under § 469(c)(7)(B) or whether Taxpayers materially participate in any activity.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

/s/

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes